



Proposed Regulation Agency Background Document

Agency name	Board of Dentistry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 60-20
Regulation title	Regulations Governing the Practice of Dentistry and Dental Hygiene
Action title	Licensure requirements
Document preparation date	10/24/05

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The amended regulations will: 1) Establish requirements for licensure by credentials for dentists consistent with new provisions in the Dental Practice Act; 2) Extend the voluntary practice license to include dentists and hygienists who held an unrestricted license in Virginia at the time it expired or became inactive and eliminate the supervision requirement for dentists out of practice less than 5 years; and 3) Clarify certain terms and rules for consistency.

The proposed regulation will replace an “emergency” regulation adopted by the Board of Dentistry in compliance with amendments to Chapter 27 of Title 54.1 and the third enactment clause of HB2368 and SB1127 enacted by the 2005 General Assembly.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

18VAC60-20-10 et seq. Regulations Governing the Practice of Dentistry and Dental Hygiene are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400 (6) provides the Board of Dentistry the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The legal authority to license and regulate dentists and dental hygienists may be found in the amended Chapter 27 of Title 54.1 of the Code of Virginia.

<http://leg1.state.va.us/cgi-bin/legp504.exe?051+ful+CHAP0587>

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The intent of the regulatory action is to comply with the requirements of Chapters 505 and 587 for regulations to implement licensure by credentials for dentists and to modify other sections of regulations in accordance with revisions to the Dental Practice Act. Since the criteria for licensure by credentials and for the restricted volunteer license are so specifically stated in the Code, the regulatory action does not need to expand or extend the requirements. It does offer clarity for provisions that were likely to generate questions and for which there was not clear guidance.

The proposed regulation will allow dentists from other states to be licensed based on their credentials but also include sufficient safeguards to ensure that practitioners who have had disciplinary action can be denied licensure. Amended regulations are also proposed with the

health and safety of patients receiving services from dentist or hygienist with a volunteer restricted license in mind.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed action will: 1) eliminate an unnecessary definition and clarify others; 2) state the qualifications for licensure by credentials for dentists; 3) set out the criteria for licensure and practice of restricted volunteer dentists and dental hygienists; and 4) establish the requirements for delegation of duties of a dental assistant who is practicing under the direction of a hygienist while the hygienist is under the general supervision of a dentist.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) With passage of legislation and adoption of regulations to implement licensure by credentials, the primary advantage to the public would be the potential increased availability of dentists who could be licensed. Proposed regulations do not impose requirements beyond those already set out in law, so the Board seeks to facilitate such licensure to the extent possible. Over the years, some areas of the state have sought to recruit dentists in specialty practice who are retiring from the military or want to relocate. When the dentist being recruited learned that he could not be licensed based on his credentials but would be required to take a clinical examination in basic dentistry, he has declined to come to Virginia. Amendments to this chapter should make it somewhat easier for underserved areas to recruit new dentists.

In addition, the change in the law and regulations allowing retired Virginia dentists and hygienists to have a restricted volunteer license to practice in free clinics has the potential for increasing the supply of practitioners for those settings. There are a significant number of Virginians who cannot afford regular dental care, so the services of free clinics are the only alternative available, and have been limited by the number of practitioners willing to volunteer.

There are no disadvantages to the public; sufficient qualifications have been incorporated to ensure that persons being licensed by credentials have practiced safely in other states and are qualified to practice in Virginia.

2) There are no specific advantages or disadvantages to the agency or the Commonwealth. Agencies of the Commonwealth that provide dental services may find it possible to hire dentists who have been practicing out-of-state or in the military who would now be willing to relocate to Virginia.

3) There are no other issues or pertinent matters.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going costs to the agency.</p>
<p>Projected cost of the regulation on localities</p>	<p>There are none.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals that may be affected by the regulation are applicants for licensure by credentials, applicants for a restricted volunteer license and dentists and dental hygienists.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There are 5032 dentists with active licenses and 3736 dental hygienists. The number of persons who may apply for licensure by credentials or for a restricted volunteer license is unknown. The number who would be considered as small businesses would be the majority of the 5032 dentists with active licenses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no costs for compliance with the proposed regulation.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

There are no alternatives to the adoption of regulations; it is required by the third enactment clause of HB2368 and SB1127. In the development of regulatory language to implement the legislation, the Board adopted rules consistent with and, in some cases, identical to the statutory language. In the development of regulations, the Board sought to conform language to the amended law and, where necessary, provide further guidance for the regulated entities.

Regulations for licensure by credentials, issuance of a restricted voluntary license or practice by a dental assistant under the general supervision of a dentist and direction of a hygienist follow the statute and add clarity to the requirements. For example, the law requires an applicant for licensure by credentials to have been in continuous clinical practice for five out of the six years immediately preceding application. The regulation will further define the amount of practice that would constitute a year of practice as a minimum of 600 hours in a calendar year.

In another example, the requirements for a restricted volunteer license were set out in the legislation, including a requirement for a review of the quality of care by an active, licensed dentist at least every 30 days. To specify how that review should occur, the regulations provide that the supervising dentist must review the quality of care every 30 days (which could be accomplished in a variety of ways, including a random check of patient charts), but must directly observe patient care and review all patient charts at least quarterly.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Norman Marks, DDS	Supports licensure by credentials for any dentist who has graduated from a US dental school and holds a license in any state and who has maintained continuing education equal to Virginia’ standards. Should not have to take a clinical examination.	The Board has not imposed a requirement for continuing education because some states do not require the same number of hours of CE, so a dentist who has been practicing in another state would have met those requirements rather than Virginia’s. The Board has not imposed any requirement for licensure by credentials that is not already specified in the law.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the emergency regulatory action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10	n/a	Sets out the definitions for words and terms used in the regulation	The definition of “approved schools” is eliminated because it is not used in the new section 71 or anywhere else in regulation. Definitions for “direction” and “general supervision” are amended to clarify that evaluation of a patient actually means that the patient has been examined.
20	n/a	Establishes the schedules and fees for renewal and reinstatement	The teacher’s license, restricted volunteer license or temporary permit to practice cannot be automatically renewed; certain conditions must be met – so the terminology is changed to clarify that renewal must be requested by June 30 th . The renewal date for the restricted volunteer license is changed to June 30 th for consistency with the law. Practicing with an expired licensure is prohibited, but the rule is amended to note the exception of a licensee who has an expired license but is practicing with a restricted volunteer license.
n/a	71	n/a	<p>18VAC60-20-71. Licensure by credentials for dentists.</p> <p>In accordance with § 54.1-2709 of the Code of Virginia, an applicant for licensure by credentials shall:</p> <p>1. Be of good moral character and not have committed any act which would constitute a violation of § 54.1-2706 of the Code of</p>

			<p>Virginia;</p> <p>2. Be a graduate of a dental program, school or college, or dental department of a university or college currently accredited by the Commission on Dental Accreditation of the American Dental Association.</p> <p>3. Have passed Part I and Part II of the examination given by the Joint Commission on National Dental Examinations;</p> <p>4. Have successfully completed a clinical examination that involved live patients;</p> <p>5. Have not failed a clinical examination required by the board in the five years immediately preceding his application;</p> <p>6. Hold a current, unrestricted license to practice dentistry in another jurisdiction in the United States and is certified to be in good standing by each jurisdiction in which he currently holds or has held a license; and</p> <p>7. Have been in continuous clinical practice for five out of the six years immediately preceding application for licensure pursuant to this section. Active patient care in the dental corps of the United States Armed Forces, volunteer practice in a public health clinic, or practice in an intern or residency program may be accepted by the board to satisfy this requirement. One year of clinical practice shall consist of a minimum of 600 hours of practice in a calendar year as attested by the applicant.</p> <p><i>All requirements for licensure by credentials are established in § 54.1-2709, but the Board has specified that “one year of clinical practice” must include a minimum of 600 hours of practice in a calendar year as attested by the applicant.</i></p> <p>CHANGE FROM EMERGENCY: <i>In the emergency regulations, #4 read: “Have successfully completed a clinical examination acceptable to the board and have not failed a clinical examination required by the board in the five years immediately</i></p>
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			<p>preceding his application;” <i>The clinical examination “acceptable to the board” was interpreted to mean one of the four regional clinical examinations that the Board now accepts for licensure by examination. In consideration of applicants from Louisiana following Hurricane Katrina, it was noted that several states (including LA) offer their own clinical examination. To ensure that licensure by credentials did not exclude applicants from those states, the regulation was clarified to state the intent of the Board which was that the clinical examination must be comparable in that it involves performance of procedures on live patients. The second half of the regulation in #4 was separated into a new #5.</i></p>
105	n/a	Sets out the requirements for holding or reactivating an inactive license	Practicing with an inactive licensure is prohibited, but the rule is amended to note the exception of a licensee who has an expired license but is practicing with a restricted volunteer license.
106	n/a	Sets out the requirements for the voluntary license for out-of-state practitioners who want to volunteer their services on certain dates and locations.	Section is amended to <u>also</u> include in Subsection A the requirements for a Restricted volunteer license , which is available to a dentist or a dental hygienist who held an unrestricted license in Virginia or another state as a licensee in good standing at the time the license expired or became inactive. The requirements are identical to those set out in §§ 54.1-2712.1 or 54.1-2726.1, but the board determined that it was necessary to restate in regulation to distinguish the 2 types of volunteer licenses. The only provision of regulation that is not already required by law is: That the restricted volunteer license must specify whether supervision is required (it is not if the restricted license holder has been actively practicing within the past 5 years), and if not, the date by which it will be required. If supervision is required, the supervising dentist is required to review the quality of care at least every 30 days and to directly observe patient care being provided by the restricted volunteer dentist and review all patient charts at least quarterly. Such supervision must be noted in patient charts and maintained in accordance with current regulations.

210	n/a	Sets out the requirements for direction and general supervision	An amendment will specify that direction includes an examination of the patient before duties can be delegated to a dental hygienist.
230	n/a	Sets out the delegation to dental assistants by hygienists or dentists	Legislation amended § 54.1-2712 . <u>Permissible practices</u> to specify that dental assistants can aid or assist dental hygienists under the general supervision of a dentist. Amendments establish that the standard for practice by a dental assistant under general supervision is to be under the <i>direction</i> of the dental hygienist who supervises the implementation of the dentist's orders by examining the patient, observing the services rendered by an assistant and being available for consultation on patient care.